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Bill Analysis
Legislative Service Commission

Sub. S.B. 258

124th General Assembly
(As Passed by the Senate)

Sens. Austria, Goodman, Randy Gardner, Jacobson, Hottinger, Fingerhut, Amstutz, Coughlin, Robert Gardner, Harris, Herington, Nein, Roberts, Spada, Mumper, White, Mallory, Prentiss, Blessing, DiDonato

BILL SUMMARY

- Permits the fire chief of a township, fire district, city fire department, or village fire department to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to any person who is under consideration for appointment or employment as a permanent, full-time paid firefighter or appointment as a volunteer firefighter.
- Permits an appointing authority to request the Superintendent of BCII to conduct a criminal records check with respect to any person who is under consideration for appointment or employment as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.
- Generally prohibits the appointment or employment of a person as a firefighter or emergency medical technician if the person is revealed by a criminal records check to have been convicted of or pleaded guilty to a felony, arson, or an offense substantially equivalent to a felony or arson.
- Requires the Superintendent of BCII to prescribe a form to obtain the necessary information to conduct a criminal records check under the bill, a standard fingerprint impression sheet for that purpose, and a reasonable fee to be charged for conducting the records check.
- Exempts from the Public Records Law specified residential and familial information of a firefighter or an emergency medical technician.

CONTENT AND OPERATION

Criminal records checks

Covered individuals and BCII conduct

The bill permits the fire chief of a township, fire district, city fire department, or village fire department (hereafter, "fire chief" refers to a fire chief of all four entities) to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to any person who is under consideration for appointment or employment as a *permanent, full-time paid firefighter* (the word "permanent" was omitted from the bill's provisions that apply to city and village fire departments or under consideration for appointment as a *volunteer firefighter*. An appointing authority may request the Superintendent of BCII under the bill to conduct a criminal records check with respect to any person who is under consideration for appointment or employment as an *emergency medical technician-basic*, an *emergency medical technician-intermediate*, or an *emergency medical technician-paramedic* (hereafter, "an EMT"). (R.C. 505.381(A), 737.081(A), 737.221(A), and 4765.301(A).)

The bill requires a fire chief or appointing authority who intends to request a criminal records check to inform each applicant, at the time of initial application for appointment or employment, that the applicant must provide a set of fingerprint impressions and that the fire chief or appointing authority requires a criminal records check to be conducted and satisfactorily completed (R.C. 505.381(F), 737.081(F), 737.221(F), and 4765.301(F)).

Upon receipt of a request for a criminal records check, a completed information form (see next paragraph), and a set of fingerprint impressions, the Superintendent of BCII must conduct a criminal records check to determine if any information exists that indicates that the person subject to the request has been convicted of or pleaded guilty to any disqualifying offense (see "Appointment," below). The Superintendent must review or cause to be reviewed all relevant information gathered and compiled by BCII that relates to the person, any relevant information contained in sealed conviction records, and, upon request, any information provided by the Federal Bureau of Investigation (FBI). (R.C. 109.578(A) and (B).)

The bill requires the Superintendent to prescribe a form to obtain from a prospective firefighter or EMT the information necessary to conduct a criminal records check. The Superintendent also must prescribe standard impression sheets to obtain the fingerprint impressions of a prospective firefighter or EMT. The bill

permits both the form and the standard impression sheets to be in a tangible format, in an electronic format, or in both formats and permits the Superintendent to prescribe methods of forwarding information and fingerprint impressions necessary to conduct a criminal records check that include, but are not limited to, electronic methods. Any prospective firefighter or EMT for whom a criminal records check is requested must obtain fingerprint impressions at a county sheriff's office, municipal police department, or other entity with the ability to make the impressions on the prescribed standard impression sheets. The office, department, or entity may charge the person a reasonable fee for making the impressions. (R.C. 109.578(C)(1), (2), and (4).)

A determination whether any information exists that indicates that a prospective firefighter or EMT previously has been convicted of or pleaded guilty to any felony or arson offense which is made by the Superintendent with respect to information considered in a criminal records check requested under the bill is valid for the prospective firefighter or EMT for a period of one year from the date upon which the Superintendent makes the determination. During that period, if another request is made for a criminal records check for that prospective firefighter or EMT, the Superintendent must provide the information that was the basis for the Superintendent's initial determination. (R.C. 109.578(D).)

The bill requires the Superintendent to prescribe and charge a reasonable fee for providing an initial criminal records check for a prospective firefighter or EMT. The person making the criminal records check request must pay this fee. The Superintendent also must prescribe and charge a lower fee than the fee prescribed for the initial criminal records check during the period that the initial check is valid (see above). (R.C. 109.578(C)(3) and (D).)

The bill defines, for its purposes, "criminal records check" to mean any criminal records check conducted by the Superintendent in accordance with the bill (R.C. 109.578(E)).

Local procedures

The bill authorizes a fire chief or appointing authority to request the Superintendent of BCII to obtain information from the FBI as a part of a criminal records check of a prospective firefighter or EMT. And, it requires a fire chief or appointing authority (1) to provide to each prospective firefighter or EMT for whom the fire chief or appointing authority intends to request a criminal records check a copy of the prescribed information form and standard fingerprint impression sheet, (2) to obtain the completed information form and impression sheet from the person, and (3) to forward the completed information form and impression sheet to the Superintendent at the time the criminal records check is requested. Each prospective firefighter or EMT who so receives an information

form and fingerprint impression sheet and is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all the information necessary to complete it and must provide the impression sheet with impressions of the person's fingerprints. If a prospective firefighter or EMT fails to provide the information necessary to complete the form or fails to provide impressions of the person's fingerprints, the appointing authority (see "Miscellaneous provisions," below) is prohibited from appointing or employing the person as a permanent full-time paid firefighter, a volunteer firefighter, or an EMT. (R.C. 505.381(B), 737.081(B), 737.221(B), and 4765.301(B).)

Appointment

The bill prohibits, except as mentioned in the next paragraph, an appointing authority from appointing or employing a person as a permanent, full-time paid firefighter, a volunteer firefighter, or an EMT if the fire chief or appointing authority has requested a criminal records check and the check indicates that the person previously has been convicted of or pleaded guilty to any of the following: (1) a felony, (2) arson, or (3) a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to a felony or arson (hereafter referred to as a "disqualifying offense") (R.C. 505.381(C)(1), 737.081(C)(1), 737.221(C)(1), and 4765.301(C)(1)).

The bill permits, however, an appointing authority to appoint or employ a person as a permanent, full-time paid firefighter, a volunteer firefighter, or an EMT, although a requested criminal records check indicates that the person previously has been convicted of or pleaded guilty to a disqualifying offense if the person meets *rehabilitation standards* that the appointing authority establishes in rules adopted under the bill (R.C. 505.381(C)(2), 737.081(C)(2), 737.221(C)(2), and 4765.301(C)(2)).

If a fire chief or appointing authority requests a criminal records check under the bill, the bill permits an appointing authority to appoint or employ a person as a permanent, full-time paid firefighter, volunteer firefighter, or EMT *conditionally* until the criminal records check is completed and the fire chief or appointing authority receives its results. If the results indicate that the person does not qualify for appointment or employment, the fire chief or appointing authority must release the person from appointment or employment. (R.C. 505.381(C)(3), 737.081(C)(3), 737.221(C)(3), and 4765.301(C)(3).)

Miscellaneous provisions

The bill requires the fire chief or appointing authority to pay to BCII the prescribed fee for each criminal records check conducted in accordance with the bill. But, the fire chief or appointing authority may charge the applicant a fee for

the costs the fire chief or appointing authority incurs in obtaining the criminal records check. The fee charged cannot exceed the amount of fees the fire chief or appointing authority pays for the criminal records check. If a fee is charged to an applicant, the fire chief or appointing authority must notify the applicant at the time of initial application for appointment or employment of its amount and that, unless it is paid, the person will not be considered for appointment or employment. (R.C. 109.578(C)(3), 505.381(D), 737.081(D), 737.221(D), and 4765.301(D).)

The bill requires *appointing authorities* to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must include rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must meet for the appointing authority to appoint or employ the person as a permanent, full-time paid firefighter, a volunteer firefighter, or an EMT. (R.C. 505.381(E), 737.081(E), 737.221(E), and 4765.301(E).) The bill defines "appointing authority" as any person or body that has the authority to hire, appoint, or employ permanent, full-time paid firefighters, volunteer firefighters, or EMTs (R.C. 505.381(G)(1), 737.081(G)(1), 737.221(G)(1), and 4765.301(G)(1)).

Public Records Law

Existing law

In general. The Public Records Law (R.C. 149.43) specifies that, generally, all "public records" (see below) must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a public office or person responsible for public records generally must make copies available at cost, within a reasonable period of time, and in accordance with specified choice of medium and mailing procedures. (R.C. 149.43(B).)

Public record. For purposes of the Public Records Law, "public record" generally means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the school. But, "public record" does not mean any of the following: medical records; records pertaining to probation and parole proceedings; records pertaining to certain abortion-related actions and to appeals of those actions; records pertaining to adoption proceedings and certain other adoption-related records; information in a Putative Father Registry record; trial preparation records; confidential law enforcement investigatory records; certain mediation communication and civil rights action records; DNA records stored in BCII's DNA Database; inmate records released by the Department of Rehabilitation and Correction (DRC) to the

Department of Youth Services (DYS) or a court of record; records maintained by DHS pertaining to children in its custody that are released to DRC; intellectual property records; donor profile records; certain records maintained by the Department of Job and Family Services; *peace officer residential and familial information* (see detail below); county hospital information that constitutes a trade secret; information pertaining to specified recreational activities of a person under the age of 18; certain child fatality review board-related records; certain records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney pertaining to the death of a child; test materials, examinations, or evaluation tools used in nursing home administrator licensure examinations; and records the release of which is prohibited by state or federal law. (R.C. 149.43(A)(1).)

The Public Records Law defines "peace officer residential and familial information" as either of the following (R.C. 149.43(A)(7)):

(1) Any information maintained in a personnel record of a peace officer that discloses: (a) the address of the actual personal residence of a peace officer, except for the state or political subdivision in which the peace officer resides, (b) information compiled from referral to or participation in an employee assistance program, (c) the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, (d) the name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer by the peace officer's employer, (e) the identity and amount of any charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation unless the amount of the deduction is required by state or federal law, and (f) the name, the residential address, the name of the employer, the address of the employer, the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer;

(2) Any record that identifies a person's occupation as a peace officer, other than statements required to include the disclosure of that fact under the Campaign Finance Law.

There is one important caveat to the peace officer residential and familial information exception. Under certain circumstances, information generally excepted from inspection or copying under the exception *must be disclosed to a journalist* by the public office, or person responsible for public records, having custody of the records of the "agency employing a peace officer." If a journalist submits a signed written request, in a specified form that includes a statement that disclosure of the information sought is "in the public interest," the public office or

person responsible for public records must disclose to the journalist the peace officer's personal residence address and, if the peace officer's spouse, former spouse, or child is employed by a public office, that employer's name and address. (R.C. 149.43(B)(5).)

Changes proposed by the bill

The bill enacts a new, specific exception to the Public Records Law. Under the bill, a "public record" also does not include *firefighter or EMT* residential and familial information. The firefighters and EMTs are added to existing law's provisions that exempt the above-listed peace officer residential and familial information from the Law, thereby protecting a firefighter's or EMT's residential and familial information in the same manner as peace officers are protected under current law. That protection includes the "journalist" caveat described above. (R.C. 149.43(A)(1)(p) and (7) and (B)(5).)

The bill defines, for purposes of the Public Records Law, (1) "firefighter" to mean any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village, and (2) "EMT" to mean EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in the Emergency Medical Service Law. (R.C. 149.43(A)(7).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-23-02	p. 1690
Reported, S. Judiciary on Civil Justice	06-19-02	p. 1922
Passed Senate (33-0)	06-19-02	pp. 1924-1925

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